

November 27, 2019

The Chair and Commissioners
Public Service Commission
State of Delaware
Cannon Building
861 Silver Lake Blvd., Suite 100
Dover, DE 19904

Re: *Regulation Dckt. No. 56 – Pre-filed Comments of Gary Myers for Dec. 5, 2019 PSC Meeting In Response to Exec. Director’s Directive to DNREC Dated November 21, 2019*

Dear Chair and Commissioners:

I understand that at your meeting on December 5, the Commission will sit to hear from DNREC why that agency failed to submit its “cost cap” determinations for the 2018-19 compliance year under the REPSA rules the PSC adopted last year. Earlier the Executive Director had set a November 13 deadline for such filing. I suspect at this upcoming meeting, DNREC will ask you to stay or hold further actions under your “cost cap” regulations until the Superior Court rules on the validity of your interpretation of the various components of the text under subsections 354(i) & (j). As you will recall those provisions direct DNREC to “determine” whether “*the total cost of complying with th[e particular renewable] requirement during a compliance year exceeds 1 [or 3]% of the total retail cost of electricity for retail electricity suppliers during the same compliance year.*”

I write to urge the Commission not to confuse any “stay” of the PSC’s regulations with any “hold” on DNREC’s statutory obligation to make the determinations called for in subsections 354(i) & (j). The Commission can’t excuse DNREC from complying with the statutory terms. Some cost cap determinations have to be made for the 2018-19 and the present compliance years.

My point is this: *if you use the statutory interpretations consistently advanced by DNREC during the prolonged rule-making, there is a strong, strong probability that the renewable expenditures for last compliance year will have exceeded the 1 and 3 % limiting levels expressed in the subsections.* In other words, even if you define the costs of compliance to reach only those costs included under DNREC's view (no Bloom Energy surcharges) and expand the "total retail cost of electricity" to include – as DNREC says - both electric supply and delivery revenues, the ratio of compliance costs to total retail electricity costs will still exceed both the 1 % and the 3 % statutory trip-wires. I show how I arrive at this conclusion below and in the two attached exhibits.

If my calculations are correct, then DNREC – by statutory command – is obligated to move forward with the consultation and freeze process for both the solar and overall renewable requirements. DNREC can't use its disagreement with the PSC's regulations as an excuse for it to do nothing. If its own interpretations result in trips of the 1 and 3 % limits, DNREC must proceed with the determination, consultation, and freeze process. Otherwise DNREC is violating the statutory obligations imposed on it by the subsections.

The Calculations of Breaches under DNREC's Own Interpretations

Here are my calculations about why – even using DNREC's views on the statutory text - the law's percentage levels have been exceeded.

Total Costs of Compliance

I don't have access to what Delmarva Power might have reported to DNREC as its Total Costs of Complying for the 2018-19 compliance year. Instead, I have reviewed what DP&L reported to the PSC about those costs in its September, 2019 Annual RPS Report to the Commission. Using the cost numbers set forth there, and making one other assumption, I calculate the total cost of complying with the solar renewable requirements for the 2018-19 year as \$ 7,856,929.¹ Similarly, using the same source, and with the same additional assumption, I see the cost of complying with the "overall" renewable requirement as coming in at \$ 31,543,102.² See Exh. A. Significantly, neither of

1 The one assumption is that DNREC paid an estimated \$1 million dollars in Green Fund solar rebates during the year. Under subsections 354(i), such "ratepayer-funded state solar rebate[s]" are included in the total cost of compliance.

2 This overall cost number includes the \$ 1 million dollar assumption for Green Fund solar rebates. See n. 1 above, It also encompasses the "wind net energy costs" related to

these final cost numbers include any Bloom Energy/QFCPP charges paid by DP&L ratepayers for OFCPP output used to fulfill 40% of the non-solar REPSA requirements.

Total Retail Cost of Electricity for Retail Electricity Suppliers

I don't have access to real numbers for the "*the total retail cost of electricity for retail electricity suppliers.*" As defined by DNREC this includes the cumulative amount paid by DP&L's non-exempt customers for electric supply and delivery services. So instead I have solved for the "over/under point" under the statutory cost cap formula: the point where the actual compliance costs calculated above would, or would not, exceed the 1 and 3 % levels. I calculate such trip point for overall renewable costs at \$1,051,436,733. See Exh. B.³ If Delmarva Power tells you that the overall amounts paid by its non-exempt customers for both supply and delivery services are below this figure, then the 3 % cap was breached. If the relevant revenues were above this \$ 1 billion figure, the 3 % cap was not exceeded.

In like fashion, the over/under point for the year's actual solar compliance costs would be \$ 785,692,900. See Exh. B. A total non-exempt revenue amount below that figure would mean the 1 % cap was passed.

In 2016, DP&L reported to DNREC that for REPSA compliance year 2015-16, that the total retail cost of electricity (under DNREC's interpretation) was \$ 682,403,734. 20 DE Reg. 493 (Dec. 2016). Unless the amount of such non-exempt revenues has greatly increased over the following three compliance years, I seriously doubt whether the "total retail cost of electricity" (as interpreted by DNREC) exceeded either of the two over/under points for compliance year 2018-19. In particular, I doubt whether the total retail cost of electricity was greater than the \$ 788 million for a 4 % level of overall costs. See n. 3 above. That means the percentage levels would have been exceeded in the 2018-19 year.

associated with several of Delmarva Power's wind energy REC contracts. Those wind net energy costs have historically been collected by DP&L as a component of customers' Renewable Compliance Charges. See PSC Dckt. 19-0175, DP&L Application, Exh. C (DP&L application includes net energy costs under wind contracts as part of recovery of renewable charges for 2019).

3 The over/under point for a 4 % cap would be \$ 788,577,600. If the non-exempt revenues were below this number, compliance costs would exceed 4 %.

What this all shows is that – even using DNREC’s own interpretive views of the legal text – both percentage thresholds were breached in 2018-19. As outlined initially, this means that the statutory language of subsections 354(i) & (j) imposes an obligation on DNREC to initiate a freeze process with the PSC even while the Superior Court might be considering the challenges to the PSC’s interpretive regulations. If when applying DNREC’s interpretations, the figures lead to a breach of the percentages set forth in the law, some action on a freeze must be done now.

Cost Cap Numbers for More than One Year

As I set forth above, there must be some consultation and decision about a freeze for the 2018-19 compliance year, whether one utilizes the PSC’s rules or DNREC’s interpretations. In any such decision-making, it would surely be helpful to have the trend line in cost cap percentages over the last few years. In 2016, DNREC determined (using its own interpretations of the text) that in compliance year 2015-16 both percentage caps had been breached. 20 DE Reg. 493 (Dec, 2016). And, as I have calculated, it is highly likely that the same conclusion applies to compliance year 2018-19. So the question then is: what were the percentages for years 2016-17 and 2017-18 when DNREC made no cost cap determinations? The Commission should ask Delmarva Power and DNREC to do the calculations for those “omitted” years. A historical picture which will probably show that compliance costs have exceeded the percentage limits year after year surely will provide some sharper insight about how a freeze should now be implemented.

Respectfully submitted,

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Exhibit A

Costs of Compliance for Compliance Year 2018-19
(Utilizing DNREC Interpretations)
(No Bloom Energy Surcharges Included)

SOLAR CARVEOUT

Green Fund Solar Rebates (estimated)	\$ 1,000,000
SREC Purchases (per DP&L 2019 PSC RPS Report)	6,856,929
TOTAL	\$ 7,856,929

OVERALL REPSA COMPLIANCE COSTS

Solar Compliance Costs	\$ 7,856,929
Non-solar REC Purchases (per DP&L 2019 PSC RPS Report)	11,816,385
Net Energy Wind Costs (per DP&L 2019 PSC RPS Report)	11,869,788
TOTAL	\$ 31,543,102

Exhibit B

Over/Under Point for Total Retail Electricity Costs for Compliance Year 2018-19

General Formula

$$(.01 \text{ or } .03)x = y$$

x = total retail cost of electricity for compliance year

y = actual total cost of complying for compliance year

Solar Carve-Out

$$(.01)x = \$ 7,856,929$$

$$x = \$ 785,692,900$$

Overall Renewable

$$(.03)x = \$ 31,543,102$$

$$x = \$ 1,051,436,733$$